

# Committee on Resources

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Before the House Resources Committee Hearing  
On the “Tribal Development Corporation Feasibility Act of 2005” (H.R. 3350)

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## INTRODUCTION

Good afternoon Chairman Pombo, Congressman Rahall and Members of the Committee. My name is Roger Fragua and I am the Deputy Director of the Denver-based Council of Energy Resource Tribes (“CERT”) and a member of the Pueblo of Jemez of New Mexico.

I have dedicated my professional career to the advancement and development of American Indian communities. Prior to joining CERT, I worked as an executive at leading energy companies creating innovative business concepts and promoting partnerships between Indian Tribes and industry. I also worked with the Western Governors' Association and the National Tribal Environmental Council on State and Tribal relations, with particular reference to environmental issues.

On behalf of the 57 Member Tribes of CERT, I first want to express our gratitude and appreciation to you Mr. Chairman for your efforts last year in proposing, defending, and ultimately enacting the *Indian Tribal Energy Development and Self Determination Act*. Thanks to you, resource Tribes will get much-needed technical and financial assistance as well as regulatory relief to assist them in their objectives regarding energy project development. We at CERT firmly believe that in the years to come we will witness more energy produced, more income and jobs to Tribes and their members, stronger Tribal governments and Tribal economies, and a more energy-secure America.

I thank the Committee for the opportunity to address you today regarding the “Tribal Development Corporation Feasibility Act of 2005” and for Chairman Pombo’s vision and thoughtfulness in introducing this important bill.

## STATISTICAL PROFILE OF NATIVE AMERICA

As this Committee knows, Native people in our great nation rank at or near the bottom of every major social and economic indicator. We live in substandard housing, we are poorly educated, we have the poorest health, job opportunities are scarce, and we continue to suffer from alcoholism, drug abuse, youth suicide, and other social pathologies that accompany this dire situation. These statistics mask the hardships Native people endure from the far reaches of bush Alaska to the Florida Everglades: by reducing Indian people to a series of numbers and graphs, statistics insulate Congress, the Executive Branch, and decision-makers at all levels by taking the humanity out of the equation and converting Indian economic stagnation into a clinical exercise. We all know that behind these statistics are the lives, hopes and dreams of Indian people who yearn for better standards of living for themselves and their families.

## TRADITIONAL INDIAN ECONOMIES

Indian people inherited an economic system that is not our own creation: when Europeans first arrived on these shores, Native economies were robust, regional trade flourished, and Tribes took care of their members. Welfare, housing certificates, and food stamps are not creations of Indian America but they have done more to crush the spirit of Native people than any army could ever dream of doing.

## SWINGS IN FEDERAL INDIAN POLICY

As the Committee also knows, Federal Indian law and policy has vacillated wildly from the early days of Treaty-making to Forced Assimilation and Tribal Termination in the late 1940s and 1950s.

In 1970, President Nixon issued his *Special Message to Congress on Indian Affairs* and rejected these failed policies, ushering in the Era of Indian Self Determination. As the most successful Federal policy devised, Indian Self Determination rests on the twin pillars of strong Tribal governments and vibrant Tribal economies. For the past 36 years, the ideas that have succeeded in rehabilitating Tribes have all been built on the solid foundation of Indian Self Determination. These acts include the *Indian Self Determination and Education Assistance Act*, the *Indian Gaming Regulatory Act*, the *Tribal Self Governance Act*, the *Native American Housing Assistance and Self Determination Act* and, as we believe time will show, the *Indian Tribal Energy Development and Self Determination Act*.

### NO FEDERAL OR TRIBAL DEVELOPMENT ENTITY CURRENTLY EXISTS

Any proposal designed to aid Tribal economic development and improve the standard of living of Native people should similarly be grounded in Indian Self Determination.

As the Congressional Research Service has reported, some \$13 to \$15 billion is appropriated by the Congress on an annual basis to fund programs and services for Indian tribes or for the benefit of individual Indians.

While many Federal agencies have authority and responsibility for small slivers of economically-oriented programs, the reality is that there is no entity --- Federal, Tribal, or Private --- that has as its sole objective the formulation and implementation of strategies to improve Tribal economies. Agencies such as the Department of Housing and Urban Development, the Bureau of Indian Affairs, the Department of Agriculture, the Commerce Department, and others, carry out their programs without any real collaboration with their sister agencies and the result is predictable: ineffective programs and inferior results.

The lack of coordination among these agencies is well documented and need not be reviewed here today. From CERT's perspective, this lack of coordination is one of the major reasons for the ineffectiveness of Federal programs and services to address economic and social problems in Native communities.

With the economic and social statistics being what they are, can anyone really say that Federal development policy is having the effect we all want? Can anyone defend with a straight face the currently fractious Federal efforts to build Tribal economies? I think the answers to these questions are clearly in the negative.

Similarly, while the many respected Tribal organizations each have a hand in relieving social and economic misery and the problems associated with poverty, there is no single entity whose charge is poverty reduction and economic growth in Native communities. The Native American Bank ("NAB") was chartered in 2001 and embodies the epitome of pan-Tribal collaboration for economic development purposes, operates from Denver, CO, and serves as a leader in providing housing and financial services to the majority of Indian people who have never had such services. The reality, however, is that at this point in time, the capitalization level of the Bank combined with the huge demand by Tribes for capital, technical and other assistance, prevents it from being the kind of national tribal development entity envisioned by H.R. 3350.

### THE POTENTIAL FOR ENERGY DEVELOPMENT ON TRIBAL LANDS

CERT occupies a unique position in that we work with Indian Tribal Governments as well as the Energy Industry on energy-related studies, projects, and policies. Starting in 1997, CERT coordinated advocacy efforts and assisted Indian Tribes in articulating an energy policy to enhance Tribal economies and strengthen Tribal decision-making and authority. Eight years later, CERT is now working with the Departments of Energy and Interior to implement the provisions of the *Indian Tribal Energy Development and Self Determination Act*.

With the passage of the Act, we are helping Tribes make the transition from the policy arena to one where project development is the primary focus. Interest in energy project development is keen and growing in both the Tribal community and in the private sector and as the Committee knows, successful project development relies not only on abundant energy resources but on scientific, technical, legal, and financial assistance as well.

Indian Tribes in the United States own an enormous quantity and variety of energy resources. In 2001, the U.S. Department of Interior reported that the total value of energy produced from Tribal lands from 1928 to 2001 was \$34 billion, derived from the sale of 743 million tons of coal; 6.5 billion cubic feet of gas; and 1.6 million barrels of oil. That same year, the Department projected that undeveloped reserves and undiscovered resources might mean potential revenues are \$875 billion: derived from 53 billion tons of coal; 37 billion cubic feet of gas; and 5.3 million barrels of oil. I note that this revenue figure, while seemingly large, actually underestimates potential revenues to Tribes resources by more than half. As we all know, from the late 1990's to the present day, market prices for energy products skyrocketed. For example, while the Department's 2001 projection used a price of \$35 per barrel for oil, the current price is \$70 per barrel suggesting that a more accurate figure is in the range of \$1.5 to \$2 trillion. As this Committee knows more than most, Indian lands and resources are made even more attractive for development because there are "No Drilling" rules in place for the Great Lakes Area; the Gulf Coast region; off the coast of California; and in the Alaska National Wildlife Refuge.

#### H.R. 3350 AND THE TRIBAL DEVELOPMENT CORPORATION

We commend you Mr. Chairman for your willingness to focus on the issue of non-gaming economic development in Indian country. We all know that gaming is not a panacea for what ails Tribal economies and that not all Indian Tribes can or will benefit from gaming, mostly because of their geographical isolation. In introducing H.R. 3350, you also recognized that the widely-held perception of gaming Tribes and "rich Indians" is inaccurate and often works to stifle efforts to devise new ways to assist Tribes with their development initiatives and potential projects.

The bill as currently drafted would direct the Secretary of Commerce establish the "Tribal Development Corporation Feasibility Study Group" (the "Study Group") to conduct a study on the feasibility of establishing the Tribal Development Corporation and submit its recommendations and report to this and other committees in the Congress with authority over Indian affairs.

The Study Group is to be made up of 12 Members: 5 representatives of Federally-recognized Indian Tribes; 3 representatives of the Alaska Native community; 1 representative of the Native Hawaiian community; 2 representatives of the Private Sector; and 1 representative of the Department of Treasury with expertise in international economic development and finance.

The Study Group's report must specifically address the following:

1. the long-term financial feasibility and sustainability of the Corporation;
2. the probable economic impacts of the Corporation in Native communities;
3. the most appropriate structure and capital level of the Corporation;
4. how Corporation funds would be provided to Tribes;
5. how non-financial services would be undertaken by the Corporation; and
6. whether and how economic diagnostic studies will be undertaken by the Corporation.

CERT commends the Chairman for the proposed composition of the Study Group and the elements that must be contained in the mandated report, *especially* the use of economic diagnostic studies to identify the causes and factors that contribute to weak Tribal economies; and to determine those projects and activities that, if implemented, would serve to create job opportunities and increased incomes for the relevant Tribe's members.

While I am here to support H.R. 3350, I am compelled to note for the Record the absence of any representative of the Department of Commerce and to remind this Committee of the Department's recent performance in the face of clear congressional directives.

Because H.R. 3350 relies, at some level, on Federal decision-makers doing their jobs, I believe some historical perspective is in order. In 2000, Congress passed and the President signed legislation to create the Office of Native American Business Development ("NABDO") within the Department of Commerce. That same year, Congress passed and the President signed legislation to create the "Indian Tribal Regulatory Reform and Business Development on Indian Lands Authority" to identify statutory, regulatory, and policy

inhibitors to greater levels of investment and economic activity in Indian economies.

Sadly, and for reasons that have never been fully understood, the Bush Administration has never made operational the NABDO, nor has it addressed the kind of regulatory and statutory changes that could be made at both the Federal and Tribal levels to improve the performance of Native economies. Accordingly, CERT strongly urges this Committee to find ways to impress upon the Administration the wisdom and necessity of breathing life into the NABDO and the Regulatory Reform Authority.

#### CONCLUSION AND RECOMMENDATION

For the reasons set out above, CERT supports H.R. 3350 and given that 2006 is a short calendar year because of the mid-term elections in the fall, we urge quick Committee consideration and floor action of H.R. 3350 so that the Senate can give the bill every consideration before adjourning for the year.

On behalf of CERT and its Member Tribes, I want to thank you again for the opportunity to appear before you today and if you have questions, I would be delighted to answer them.